

### **REMARKS**

Further and favorable reconsideration is respectfully requested in view of the foregoing amendments and following remarks.

Claims 1-13 are pending in this application. Non-elected claims 8-10, 12 and 13 are withdrawn from consideration.

Claim 1 has been amended to limit the definition of ring [A] in the compound of formula [II] to 1,3,5-oxadiazine, in accordance with the Restriction and Election of Species Requirement. As a result, claim 6 has been amended to correspond with the amendments to claim 1.

In addition, claims 1-7 and 11 have been amended to make minor editorial changes that are self-explanatory.

Applicant appreciates the courtesies extended to Applicants' attorney during a telephonic interview with Examiner Brown on November 12, 2010.

On page 8, first paragraph, of the Office Action, the Examiner indicates that clothianidin is a compound of formula [II] of the present application wherein A+B=1,3,5-oxadiazine. However, during the interview, the Examiner agreed that clothianidin is not a compound of formula [II], wherein A+B=1,3,5-oxadiazine. Thiamethoxam is a compound of formula [II], wherein A+B=1,3,5-oxadiazine. As a result, the Examiner indicated that she may withdraw claim 7 from further consideration, because it does not read on the elected species.

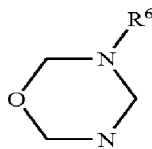
#### **I. Claim Rejection Under 35 U.S.C. § 112**

The Examiner rejects claims 1, 2, 6, 7 and 11 under 35 U.S.C. § 112, second paragraph, as being indefinite for the term "kinds of compounds" in claim 1. Claim 1 has been amended to recite "comprises at least one compound selected from compounds represented by the formula [I]". Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

#### **II. Double Patenting Rejection**

The Examiner provisionally rejects claims 1-6 under 35 U.S.C. 101 as claiming the same invention as that of claims 1-6 of copending application No. 12/788,679.

Claim 1 recites that A and B can be taken together with the adjacent Y, C and N to form



ring [A], which is a group represented by the formula: . Thus, claim 1 has been amended to restrict the compound of formula [II] so that ring [A] is 1,3,5-oxadiazine, as elected in the Restriction and Election of Species Requirement.

In claim 1 of copending application No. 12/788,679 (a divisional application of the present application), A and B “are the same or different, and each represent a hydrogen atom or a C<sub>1-6</sub> alkyl group”. In the copending divisional application, A and B **cannot** be taken together with the adjacent Y, C and N to form a ring [A] of 1,3,5-oxadiazine.

Accordingly, claim 1 of the present application is patentably distinct from claim 1 of the copending divisional application, and thus the present application does not claim the same subject matter as the copending divisional application.

Therefore, reconsideration and withdrawal of the rejection are respectfully requested.

### III. **Claim Rejection Under 35 U.S.C. § 103**

The Examiner rejects claims 1-7 and 11 under 35 U.S.C. 103(a) as being unpatentable over Berger et al. (U.S. 7,696,232). As applied to the amended claims, Applicant respectfully traverses the rejection.

The insecticide composition of claim 1 comprises at least one compound represented by compounds of formula [I] **and** a compound represented by the formula [II].

On the other hand, the Berger et al. reference enumerates a number of compounds or medicaments which can be used together with a compound of formula [I] (see column 82, line 27 to column 83, line 36). The compounds or medicaments taught by the reference are various and diverse, and there is no reason or rationale to select and combine the compounds disclosed in the reference to arrive at the presently claimed composition.

An insecticide composition comprising the **combination** of a compound represented by the formula [I] and a compound represented by the formula [II] would not have been obvious from the teachings of the Berger et al. reference, which enumerates various and diverse examples.

**Furthermore, the claimed composition provides superior and unexpected results over the art, because of a synergistic effect of the combination of both a compound of formula [I] and a compound of formula [II].** Thus, the claimed composition exerts excellent insecticidal effects that cannot be obtained when each of the compounds in the claimed composition is used alone.

For example, as is clear from Test Example 2 of the specification, a compound represented by the formula [II] (i.e., thiamethoxam) alone in a composition shows **no insecticidal activity** of *Spodoptera litura* at an application concentration of 0.007 ppm, and a compound represented by the formula [I] (i.e., compound (I-1)) alone in a composition shows a **55%** death rate of *Spodoptera litura* at an application concentration of 0.007 ppm (see Table 2 and page 40, lines 7-11 of the specification).

However, in spite of these results, the claimed composition comprising a compound represented by the formula [I] and a compound represented by the formula [II] shows an **80%** death rate of *Spodoptera litura* at the same application concentration (i.e., thiamethoxam: 0.007 ppm and compound (I-1): 0.007 ppm) (see Table 2 and page 40, lines 7-11 of the specification).

Furthermore, as is clear from Test Example 5 of the specification, a compound represented by the formula [II] (thiamethoxam) alone shows a **10%** death rate of *Plutella xylostella* at an application concentration of 0.0064 ppm, and a compound represented by the formula [I] (compound (I-4)) alone shows a **15%** death rate of *Plutella xylostella* at an application concentration of 0.0064 ppm (see Table 8 and page 45, lines 5-20 of the specification).

However, in spite of these results, the claimed composition comprising a compound represented by the formula [I] (compound (I-4)) and a compound represented by the formula [II] (thiamethoxam) shows a **50%** death rate of *Plutella xylostella* at the same application concentration (i.e., thiamethoxam: 0.0064 ppm and compound (I-4): 0.0064 ppm) (see Table 8 and page 46, lines 7-11 of the specification).

These tests show that the death rate from the claimed composition, which comprises **both** a compound represented by the formula [I] and a compound represented by the formula [II], significantly and unexpectedly improves the sum total death rate, as compared to a composition comprising only a compound represented by the formula [I] or only a compound represented by the formula [II] and as compared to the total death rate of the two lone compositions.

Accordingly, the claimed composition comprising **both** a compound represented by formula [I] and a compound represented by formula [II] exerts superior and unexpected **synergistic** insecticidal activity.

Because each of the compounds of formula [I] and formula [II] exert little or no insecticidal activity by themselves, a person of ordinary skill in the art would not have predicted, conceived or found it obvious that a composition comprising both a compound of formula [I] and a compound of formula [II] would have synergistic insecticidal activity when used in combination.

Therefore, the insecticidal composition of claim 1 would not have been obvious over the Berger et al. reference.

Claims 2-7 and 11 depend directly or indirectly from claim 1, and thus also would not have been obvious over the reference.

Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

**IV. Second Information Disclosure Statement**

Applicant respectfully requests express consideration of the references cited in the Second Information Disclosure Statement filed October 20, 2010, and requests the Examiner to return an Examiner-initialed copy of the PTO/SB/08 form to Applicant's attorney with the next Official Action.

**V. Conclusion**

For these reasons, Applicant takes the position that the presently claimed invention is clearly patentable over the applied references.

Therefore, in view of the foregoing amendments and remarks, it is submitted that the rejections set forth by the Examiner have been overcome, and that the application is in condition for allowance. Such allowance is solicited.

Respectfully submitted,

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